

payment is received by the association until the conversion is completed or terminated.

(k) *Extensions of time to complete public offering or direct community offering; post-effective amendments to subscription offering circular.* (1) The Office may grant one or more extensions of the time required to complete the sale of all shares of capital stock under paragraph (i) of this section, provided that no single extension of time shall exceed 90 days.

(2) Immediately upon the granting of an extension of time pursuant to paragraph (k)(1) of this section, the converting savings association shall distribute to each subscriber in the offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the Office pursuant to paragraph (k)(4) of this section which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease or rescind this subscription:

(i) At any time prior to 20 days before the end of the extension period; or (ii) at any time prior to the date of the commencement of the public offering or the direct community offering: *Provided*, That if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting savings association.

(3) For the purpose of paragraph (k) of this section, the public offering shall be deemed to commence upon the filing with the Office of the preliminary offering circular for the public offering, and the direct community offering shall be deemed to commence upon the declaration of effectiveness by the Office of the final offering circular.

(4) After the expiration of subscription rights, the converting savings association shall file with and have declared effective by the Office a post-effective

amendment to the offering circular delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(5) Any post-effective amendment to an offering circular distributed to subscribers in the offering shall be distributed by the converting savings association immediately after the declaration of effectiveness to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering, and the converting savings association shall grant to each subscriber and ordering person the right to increase, decrease, or rescind his or her subscription or order for a period which shall be no less than the greater of ten days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the Office pursuant and subject to the provisions of paragraph (k)(2) of this section.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22734, May 3, 1994; 59 FR 61262, Nov. 30, 1994]

§ 563b.8 Procedural requirements.

(a) Filing an application for conversion. An applicant that desires to convert in accordance with this part shall file ten copies of an application for approval in the form prescribed by the Office.

(b) *Return of improperly executed or materially incomplete filings.* (1) Any application for approval that is improperly executed shall not be accepted for filing and shall be returned to the applicant.

(2) Subject to the provisions of paragraph (b)(3) of this section, any application for approval that does not contain copies of:

- (i) A plan of conversion;
- (ii) A preliminary proxy statement with signed financial statements; and
- (iii) A preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant.

Any application for approval containing a materially incomplete plan of conversion, proxy statement, or form

of proxy may be returned by the Office to the applicant.

(3) Any application for approval which contains, at a minimum, a materially complete plan of conversion shall be accepted for filing if the application for approval is accompanied by the written request of the applicant that the application not be reviewed by the Office until the applicant requests and the Office consents to the filing of the additional materials set forth in paragraph (b)(2) of this section.

(c) *Additional filing requirements.* An applicant whose plan of conversion has been approved by the Office shall fulfill the following requirements.

(1) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion a certified copy of each resolution adopted at such meeting relating to the plan of conversion, together with the following information:

- (i) The total number of votes eligible to be cast;
- (ii) The total number of votes represented in person or by proxy at the meeting;
- (iii) The total number of votes cast in favor of and against each such matter; and
- (iv) The percentage of votes necessary to approve each such matter.

The compilation of the votes cast at the meeting may be prepared for the savings association by an independent public accountant or by an independent transfer agent.

(2) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion an opinion of counsel to the effect that:

- (i) The meeting of members was duly held in accordance with all requirements of applicable State and Federal law and regulation;
- (ii) All requirements of State law applicable to the conversion have been complied with; and
- (iii) If the association has used proxies executed prior to the proxy solicitation required by § 563b.6(c)(1), the authority conferred by such proxies includes authority to vote on the plan of conversion.

(3) Each offering circular for the offering shall be prepared in compliance with this part and Form OC. The applicant shall file with the Office ten copies of each preliminary offering circular and twenty-five copies of each final offering circular.

(d) *Termination or amendment of charter.* (1) Upon approval of a plan of conversion by the members of a State-chartered savings association or a Federal savings association which is converting to a State-chartered stock savings association, the charter of such savings association shall terminate effective upon the issuance to it of a stock charter under the laws of the State in which the home office of the applicant is located. If such converting savings association is a Federal savings association, its Federal charter shall promptly be surrendered to the Office for cancellation. A savings association converting to a State-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual association converting to a Federal stock association shall apply to amend its charter and bylaws to read in a form consistent with part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual association converting to a federally-chartered stock association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a Federal or a State-chartered mutual savings association converting to a State-chartered stock savings association, unless State law otherwise prescribes, the corporate existence of the converting savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

(e) *Number of copies; place of filing; binding; signatures.* (1) Whenever a requirement is made under this part for the filing of four copies of any document with the Office, one copy shall be filed with the Regional Director or his or her designee and the remaining copies with the Chief Counsel, Business

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Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Whenever a requirement is made under this part for the filing of ten or more copies of any document with the Office, three copies shall be filed with the Regional Director or his or her designee and the remaining copies with the Chief Counsel, Business Transactions Division. Whenever a requirement is made under this part that a document to be filed be manually signed, one manually signed copy shall be filed with the Regional Director or his or her designee and another with the Chief Counsel, Business Transactions Division. Other copies shall be conformed. Each of the copies filed under this part shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

(2) At least two copies of every application and every amendment thereto filed shall be manually signed by:

- (i) A duly authorized representative of the applicant on its behalf;
 - (ii) Its principal executive officer;
 - (iii) Its principal financial officer;
 - (iv) Its principal accounting officer;
- and
- (v) At least two-thirds of its directors.

(3) If any name is signed to an application or any amendment thereto pursuant to a power of attorney, four copies of such power of attorney, including two manually signed, shall be filed with the application.

(4)(i) Except as provided in paragraph (e)(4)(ii) of this section, the filing of any application or amendment thereto under this part shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not such director has signed the application or any amendment thereto) severally that:

(A) He or she has read such application or amendment;

(B) In the opinion of each such person, he or she has made such examination and investigation as is necessary

to enable him or her to express an informed opinion that such application or amendment complies to the best of his or her knowledge and belief with the applicable requirements of this part and forms prescribed hereunder; and

(C) Each such person holds such informed opinion.

(ii) The representations specified in paragraph (e)(4)(i) of this section shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, such director files with the Office within 10 business days after the filing of such application or amendment a statement describing those portions of such filing as to which he or she does not so represent.

(f) *Requirements as to paper and printing.* (1) Applications shall be filed on good quality, unglazed, white paper approximately 8½ by 13 or 8½ by 11 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to such sizes, and the plan of conversion, proxy statement and offering circular may be on smaller paper if the applicant so desires.

(2) Applications and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, applications for any portion thereof may be prepared by any similar process which, in the opinion of the Office, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(g) *Method of preparation.* Every application shall furnish information in item-and-answer form in response to the items of the appropriate form, and shall include the captions of the form, but omit the text of all items and instructions. Every proxy statement and offering circular shall present information as provided in paragraph (n) of this section in response to the items of

the appropriate form in lieu of furnishing the information in item-and-answer form, and shall omit the captions and text of all items and instruction. Every application shall include a cross reference sheet showing the location in the proxy statement and offering circular of the response to the items of the appropriate form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

(h) *Interpretation of requirements.* (1) Unless the context indicates otherwise, the forms require information only as to the applicant.

(2) Whenever words relate to the future, they have reference solely to present intention.

(3) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

(i) *Additional information.* In addition to the information expressly required to be included in any application under this part, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they made, not misleading.

(j) *Information unknown or not reasonably available.* Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within

whose knowledge the information rests and stating the result of a request made to such person for the information.

(k) *Incorporation of certain information by reference.* (1) Where an item in an application calls for information not required to be included in the proxy statement or offering circular, matter contained in any part of the application, including exhibits, may be incorporated by reference in answer, or partial answer, to such item. No information may be incorporated by reference in a proxy statement or offering circular, unless the document containing such information is attached thereto or is summarized or outlined as provided in paragraph (1) of this section. However, an offering circular may incorporate by reference the information contained in a proxy statement previously delivered, without need of summary or outline.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(l) *Summaries or outlines of documents.* Where a summary or outline of the provisions of any document is required, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(m) *Legibility of materials.* The body of all printed plans of conversion, proxy statements, and offering circulars, including all notes to financial statements and other tabular data included therein, shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large

and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(n) *Presentation of information.* (1) The information required in a proxy statement or offering circular need not follow the order of the items or other requirements in the appropriate form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item.

(2) All information contained in a plan of conversion, proxy statement or offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in any form under this part shall be divided into reasonably short paragraphs or sections.

(3) Every proxy statement and offering circular shall include in the forepart thereof a reasonably detailed table of contents showing the subject matter of its various sections or subdivisions and the page number on which each such section or subdivision begins.

(4) All information required to be included in a proxy statement or offering circular shall be clearly understandable without the necessity of referring to the particular form or to the regulations under this part. Except as to financial statements and information required in tabular form, the information set forth in a proxy statement or offering circular may be expressed in condensed or summarized form.

(5) Financial statements are to be set forth in comparative form, and shall include the notes thereto and the accountants' certificate or certificates. Section 563c.1 of this chapter governs the certification, form and content of such financial statements, including the basis of consolidation.

(o) *Application of amendments to regulations and forms.* (1) The form and contents of any filing made under the pro-

visions of this part need conform only to the applicable regulations and forms then in effect, and contain the information, including financial statements specified therein, required at the time the filing is made, notwithstanding subsequent amendments to such regulations, except as otherwise provided in any such amendment or in paragraph (o)(2) of this section.

(2) Whenever the Office prohibits by order or otherwise the use of any filing under this part, the form and contents of any filing used thereafter shall conform to the requirements of such order and the applicable regulations and forms in effect at the time such prohibition ceases to be effective.

(p) *Consents of experts.* (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this part are named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this part, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

(2) All written consents filed pursuant to paragraph (p) of this section shall be dated and signed manually. A list of such consents shall be filed with the application. Where the consent of the expert is contained in his or her report, a reference shall be made in the list to the report containing such consent.

(q) *Consents of persons about to become directors.* If any person who has not signed an application is named in the proxy statement or offering circular as about to become a director, the written consent of such person shall be filed with the appropriate form.

(r) *Date of filing.* The date on which any documents are actually received by the Office in the manner prescribed in this part shall be the date of filing thereof.

(s) *Amendments.* All amendments to any application under this part shall be

filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall conform to all pertinent regulations applicable to the type of application which they amend.

(t) *Pre-filing conferences with applicants.* (1) The staff of the Office, including the Regional Director or his or her designee, will be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Pre-filing review of an application may be refused by the staff of the Office if such review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under paragraph (t) of this section, the staff of the Office will not undertake to prepare material for filing but will limit themselves to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives.

(u) *Review of the Office's action.* Any person aggrieved by a final action of the Office which approves, with or without conditions, or disapproves a plan of conversion pursuant to this part may obtain review of such action by filing in the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or in the U.S. Court of Appeals for the District of Columbia Circuit, a written petition praying that the final action of the Office be modified, terminated or set aside. Such petition must be filed within 30 days after publication of notice of such final action in the FEDERAL REGISTER, or 30 days after the mailing by the applicant of the notice to members as provided for in § 563b.6(c) of this part, whichever is later. The further procedure for review is as follows: A copy of the petition is forthwith transmitted to the Office by the clerk of the court and thereupon the Office files in the court the record in the proceeding, as provided in section 2112 of title 28 of the U.S. Code.

Upon the filing of the petition, the court has jurisdiction, which upon the filing of the record is exclusive, to affirm, modify, terminate, or set aside in whole or in part, the final action of the Office. Review of such proceedings is had as provided in chapter 7 of title 5 of the U.S. Code. The judgment and decree of the court is final, except that they are subject to review by the Supreme Court upon *certiorari* as provided in section 1254 of title 28 of the U.S. Code.

(v) *Post-conversion reports.* The applicant shall file such post-conversion reports concerning its conversion as the Office may require.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 14348, Apr. 20, 1992; 59 FR 22735, May 3, 1994; 60 FR 66718, Dec. 26, 1995]

§ 563b.9 Conversion of a savings association in connection with the formation of a holding company.

A savings association may convert to the stock form pursuant to this subpart A as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted savings association. In such a transaction eligible account holders, supplemental eligible account holders, and voting members of the converting savings association shall receive, without payment, non-transferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part to purchase capital stock of the newly-formed holding company in lieu of capital stock of the converting association. Unless clearly inapplicable, all of the requirements of this subpart A shall apply to a conversion under this section.

§ 563b.10 Conversion of a savings association through merger with an existing holding company or stock savings association.

A savings association that qualifies for a voluntary supervisory conversion under subpart C of this part may convert to stock form by merging with an existing holding company or interim Federal or state chartered stock association in a transaction in which stock of the existing holding company or resulting association is issued.

[59 FR 22735, May 3, 1994]